

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

Dwayne Sims,

Plaintiff,

v.

Case No. 2:22-cv-4357

Judge James L. Graham

Magistrate Judge Kimberly A. Jolson

Department of Rehabilitation and  
Corrections, et al.,

Defendants.

Order

Plaintiff Dwayne Sims brings this action *pro se* for alleged violations of his rights under the Eighth Amendment to the United States Constitution while incarcerated at the Toledo Correctional Institution. He alleges that defendant Jason Joseph used excessive force on him and that defendants Brooklyn Beavers, Jason Crabtree, Michael Farley and Robert Lindsey failed to intervene.

This matter is before the Court on the Magistrate Judge's August 2, 2024 Report and Recommendation. The Magistrate Judge recommended that plaintiff's motion for summary judgment be denied because defendants did not, as plaintiff had argued, make admissions during discovery acknowledging the truth of his claims. The Magistrate Judge further recommended that defendants' motion for summary judgment be denied as to the issue of exhaustion of administrative remedies, but granted as to the merits of the claims because plaintiff did not offer evidence to rebut defendants' factual showing that Joseph had not used force and that the other defendants had not witnessed force being used.

No objections to the Report and Recommendation have been filed. Accordingly, the Court ADOPTS the Report and Recommendation (Doc. 64), DENIES plaintiff's motion for summary judgment (Doc. 50), and GRANTS defendants' motion for summary judgment (Doc. 60). The Clerk of Court is instructed to enter Judgment in favor of defendants and close this case.

DATE: September 9, 2024

s/ James L. Graham  
JAMES L. GRAHAM  
United States District Judge